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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN DETROIT DIVISION

RICHARD ROSENBAUM	
An individual.	

Case No.: Hon.:

Plaintiff.

- VS -

TOYOTA MOTOR SALES, USA, INC., a Michigan corporation.

Defendant.

THE RUBINSTEIN LAW FIRM Jan Jeffrey Rubinstein (P57937) Ryan P. Richardville (P77335) Attorneys for Plaintiff 30150 Telegraph Rd., Stc. 444 Bingham Farms, MI 48025 (248) 220-1415

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, RICHARD ROSENBAUM ("ROSENBAUM"), by and through his attorneys, THE RUBINSTEIN LAW FIRM, and for his Class Action Complaint and Demand for Jury Trial ("Complaint") against Defendant, TOYOTA MOTOR SALES, USA, INC. ("TOYOTA") to put an end to its unlawful practice of advertising and representing that their automobile, specifically the Toyota Prius Plug-In, can operate in all-electric mode for up to thirteen (13) miles on a full charge to consumers nationwide. Plaintiffs, for their Complaint, allege as follows upon personal knowledge as to themselves and the own acts and experience and, as to all other matters, upon information and belief, including investigation conducted by their attorneys. Plaintiff, the class

representative on his own behalf and on the behalf of all persons similarly situated, seek damages for Breach of Contract; Product Liability; and violation of the Uniform Commercial Code.

NATURE OF THE ACTION

- Defendant, Toyota, engages in selling and offering for sale a vast array of automobiles throughout the United States.
- Defendant, TOYOTA, has resorted to false advertisement and false representations that the Toyota Prius Plug-In can operate in a fully electric mode for up to thirteen (13) miles on a full charge.
- Because Defendant TOYOTA makes false representations through advertisements to consumers, it has, and continues to, violate the Uniform Commercial Code, Breached its contract with consumers, and is liable to these consumers based upon product liability.

PARTIES

- Plaintiff RICHARD ROSENBAUM is a natural person and citizen of the State of Michigan residing at 2618 Colonial Way Bloomfield Township, MI 48304.
- 5. Defendant Toyota Motor Sales, USA, Inc., is a corporation existing under the laws of the State of Michigan with its registered office located at 30600 Telegraph Rd. Ste. 2345 Bingham Farms, MI 48025. Toyota conducts business throughout this District, the State of Michigan, the United States, and abroad.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter over this Verified Class Action Complaint pursuant to MCL 600.6419 and MCL 600.6419(a). The matter in controversy exceeds \$1,000.00, exclusive of interest and costs. 7. Venue is proper in this district under 28 U.S.C. 1391(b) because TOYOTA conducts business in this District, the improper conduct alleged in this Complaint occurred in this District, and the injury arose in this District. Venue is additionally proper because Plaintiff resides in this District.

FACTUAL BACKGROUND

- 8. Defendant provides a wide range of automobiles for purchase by the general public. In their pursuit to combat raising gasoline prices, Defendant released for sale in 2012 throughout the State of Michigan and nationwide a TOYOTA Prius Plug-In automobile.
- In order to sell more vehicles and reach a vast array of customers. Defendant conducted a
 marketing campaign stating that the Prius Plug-In can operate for up to thirteen (13) miles
 on a full charge.
- 10. On or about 2012. Plaintiff ROSENBAL'M purchased from TOYOTA a Prius Plug-In vehicle specifically for his 12.07 mile trip from his home to his office without using the gasoline engine.
- 11. Plaintiff purchased the Toyota Prius Plug-In from Page Toyota in Southfield, Michigan.
- 12. Prior to Plaintiff's purchase, TOYOTA specifically represented that the fully electric range was at minimum thirteen (13) miles on its website and through various other marketing and advertising mediums and makes no mention of the limitation regarding the outdoor temperature and the vehicles ability to operate in certain climates.
- 13. After Plaintiff's purchase of the Prius Plug-In. Plaintiff discovered that after a full, overnight charge the electric mode of the vehicle only allows for travel an estimated 8.0 to 8.2 miles in the summer months only.

- 14. On or about May of 2015, Plaintiff provided his Prius Plug-In to Defendant. TOYOTA, for an inspection regarding Plaintiff's lower-than-expected mileage rate of 8.0 miles. After the "test" was performed, Plaintiff began to experience a fully-charged electric mileage rate of 10.0 to which Plaintiff suspects alterations were made despite Defendant, TOYOTA'S, denial of the same.
- 15. Thereafter, Plaintiff also discovered that the Prius Plug-In will not operate in electric mode at all when the outside temperature is lower than fifty-five (55) degrees Fahrenheit.
- 16. That at temperatures below fifty-five (55) degrees Fahrenheit, the car's gas engine automatically and immediately operates when the power is turned on, presumably in order to provide the hot water needed by the car's heater.
- 17. Plaintiff is unable to utilize the Prius Plug-In for its main purpose of fuel economy to run on an electric motor for the advertised and marketed mileage and for more than half of the calendar year in the state of Michigan due to the outdoor climate.

CLASS ACTION ALLEGATIONS

- 18. Plaintiff incorporates by reference paragraphs one through seventeen.
- Plaintiff, RICHARD ROSENBAUM, brings this action on his own behalf and on behalf of those similarly situated purchasers of 2012 TOYOTA Prius Plug-In vehicles pursuant to MCR 3,501(A)(1).
- 20. The individual Plaintiff, RICHARD ROSENBAUM, seeks to represent the class of individuals consisting of all those purchasers of the 2012 TOYOTA Prius Plug-In vehicles who were similarly affected in justifiable reliance on the Defendant's advertised electric mileage range and those who are subject to driving in temperatures below fifty-five (55) degrees Fahrenheit.

- 21. Numerosity: The exact number of members of the proposed class is not presently known, but based upon information and belief the number is well in excess of 100,000 people, and is so numerous that joinder of all members of the proposed class in this action is impracticable.
- 22. Commonality and Predominance: There are questions of law and fact common to the class. These include legal and factual questions pertaining to the mileage that the Prius Plug-In can travel on a full charge, and the inability to utilize the electric capabilities in temperatures under fifty-five (55) degrees Fahrenheit.
- 23. *Typicality*: The individual Plaintiff's claims are typical of the claims of the member of the proposed class in that all these claims arise from the same promise made to them by the Defendant manufacturer. Toyota, that the fully electric range would exceed thirteen (13) miles on a full charge in any climate without use of the gasoline engine.
- 24. Adequate Representation: The individual Plaintiff, RICHARD ROSENBAUM, will fairly and adequately represent the interest of the proposed class because they have the same or similar claims and interest arising from the same or similar operative facts and because he has secured representation of an attorney who is skilled, knowledgeable and experienced in civil litigation and multiparty and class action litigation.
- 25. Policies Generally Applicable to the Class: Toyota's wrongful acts were undertaken on grounds that are generally applicable to the proposed class members, making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole. Defendant's policies and representation herein apply and affect members of the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class. The factual and legal bases of

Defendant's liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff and the other members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class. Plaintiff and the members of the Class have suffered harm and damages as a result of Defendant's unlawful and wrongful conduct.

- 26. Superiority: The common questions of law and fact that are implicated predominate over any questions that affect only individual members of the proposed class, and class action is far superior to any other available method for the fair and efficient adjudication of this controversy. The injuries suffered by the individual members of the Class are likely to have been relatively small compared to the burden and expense of individual prosecution of the litigation necessitated by Defendant's actions and representation. Absent a class action, it would be difficulty, if not impossible, for the individual members of the Class to obtain effective relief from Defendant. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented herein. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.
- 27. Plaintiff and the proposed Class reserve the right to revise the foregoing "Class Allegations" and "Class Definition" based on facts learned through additional investigation and in discovery.

COUNT 1 - BREACH OF CONTRACT

- 28. Plaintiff incorporates by reference paragraphs one through twenty-six.
- 29. Attached as Exhibit "A" is a Retail Installment Sale Contract-Simple Interest which Plaintiff, and other members in the proposed Class signed with various Toyota dealerships upon purchasing a new Toyota Prius Plug-In.
- 30. For years, TOYOTA in its advertising and marketing specifically represented and promised to consumers that they would receive an electric vehicle that can operate in any climate on its electric engine for up to thirteen (13) miles uninterrupted.
- 31. TOYOTA, especially considering the publicity and affect nationwide regarding raising gas prices, should have reasonably expected to induce action of a definite and substantial character on the part of Plaintiffs.
- 32. As a result of TOYOTA's representations, TOYOTA induced Plaintiffs to rely upon its word that the vehicle was fully operative in electric mode without excluding specific outdoor temperature thresholds.
- 33. In providing irrevocable promises and information regarding the use of the Prius Plug-In. Plaintiffs acted in justifiable reliance of TOYOTA's representations, advertising, and marketing to their detriment.
- 34. The circumstances are such that TOYOTA's representations have caused significant damages to Plaintiffs, which must be addressed in order to avoid injustice.

WHEREFORE, Plaintiff, RICHARD ROSENBAUM, on behalf of himself and the represented class, respectfully requests that this Honorable Court enter judgment against Defendant, TOYOTA MOTOR SALES, USA, INC., in an amount greater than \$75,000.00 together with interest, costs, and reasonable attorney fees.

COUNT II - BREACH OF EXPRESS AND IMPLIED WARRANTIES

- 35. Plaintiff incorporates by reference paragraphs one through thirty-three.
- 36. Defendants are merchants with respect to the vehicle under MCL 440.2104.
- 37. The vehicle Plaintiff purchased was subject to implied warranties of merchantability under MCL 440.2314.
- 38. Defendant, to induce the sale, also made certain express warranties and representations to Plaintiff, both orally and in writing including, but not limited to, the specific ability to operate without a the engagement of the gasoline engine for a distance of at least thirteen (13) miles on electric power only, and through their advertising and conduct.
- 39. These express and implied warranties and representations included, but were not limited to, the following:
 - The vehicle was fit for the specific purpose of reliable electric transportation for a specific mileage of thirteen (13) miles:
 - b. The vehicle was of good, sound, and merchantable quality.
 - The vehicle was free from defective parts and workmanship.
 - The vehicle was engineered and designed to function without requiring unreasonable outdoor temperature thresholds.
- 40. This vehicle did not perform as warranted and represented in that it has repeatedly failed to meet the specific electric mileage warranted and represented by Defendant due to defective parts and workmanship, as well as the ability to function in electric mode in temperatures below fifty-five (55) degrees Fahrenheit.
- 41. As a result of these defects. Plaintiffs cannot reasonably rely on the vehicle for its ordinary purpose of efficient, electric, and safe transportation.

- 42. Plaintiff has given Defendant reasonable opportunities to cure the defects and make the vehicle fit for its intended purpose, but Defendant has been unable and/or refused to do so within a reasonable time and without cost to Plaintiff.
- 43. As a direct and proximate result of Defendant's various breaches of warranty, Plaintiff has suffered damages, including excess fuel costs, the cost and inconvenience of obtaining alternative transportation, downtime, lost profits, interest and sales tax, and insurance costs. In addition, Plaintiff will suffer future damages, including repair costs, downtime, alternative transportation costs, inconvenience, and diminished resale value of the vehicle, together with costs and attorney fees in attempting to obtain relief from Defendant's wrongful conduct.

WHEREFORE, Plaintiffs, RICHARD ROSENBAUM, on behalf on himself and the affected class, respectfully requests this Honorable Court enter judgment against Defendant, TOYOTA MOTOR SALES, USA, INC., as follows:

- Money Damages in whatever amount above \$75,000.00 Plaintiffs are found to be entitled, plus interest, costs, and reasonable attorney fees;
- ii. Equitable relief, including but not limited to repair of the subject vehicles in order to achieve the specific mileage in electric mode and extension of the express and implied warranties and service contracts that are or were applicable to the subject vehicle:
- iii. Any such other and further relief that this Court deems honorable and just.

COUNT III - VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

44. Plaintiff incorporates by reference paragraphs one through forty.

- 45. Plaintiff is an "affected person" within the meaning of the Michigan Consumer Protection Act.
- 46. Defendant is engaged in "trade or commerce" within the meaning of the Michigan Consumer Protection Act.
- 47. By engaging in unfair, unconscionable, or deceptive acts, or practice in the conduct of trade or commerce, specifically advertising the ability to specifically travel at least thirteen (13) miles on a full charge without the implementation of outdoor temperature thresholds, Defendant, TOYOTA, has violated the Michigan Consumer Protection Act. MCL 445.903.
- 48. Defendant, by representing that the Prius Plug-In was capable of traveling thirteen (13) miles on a full battery charge without a specific outdoor temperature threshold, has violated the Michigan Consumer Protection Act.
- 49. Unless restrained by the Court. Defendant will continue to violate the Michigan Consumer Protection Act.

WHEREFORE. Plaintiff, RICHARD ROSENBAUM, on behalf of himself and the represented class, respectfully requests that this Honorable Court enter judgment against Defendant, TOYOTA MOTOR SALES, USA, INC., as follows:

- i. That this Court enter an order forbidding Defendants from engaging in or offering to engage in any provision and/or advertisement of capable electric mode mileage, for which adherence to the Michigan Consumer Protection Act, is required.
- ii. That this Court enter an order commanding Defendant to take whatever corrective action this Court deems just in order to prevent the false advertising and marketing claims regarding the Prius Plug-In.

- iii. That the Court award Plaintiff actual costs and attorney fees.
- iv. A monetary judgment in an amount greater than \$75,000.00 together with interest, costs, and reasonable attorney fees.

JURY TRIAL

Plaintiff, Richard Rosenbaum, on behalf of himself and all others in the proposed Class, hereby demands a trial by jury for all issues so triable.

Respectfully Submitted.

THE RUBINSTEIN LAW FIRM

Jan Jeffrey Rubinstein (P57937)

Dated: July 11, 2016

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Exhibit "A"

2:16-cv-12645-BAF-RSW Doc # 1 Filed 07/15/16 Pg 14-of 17 POYOTA

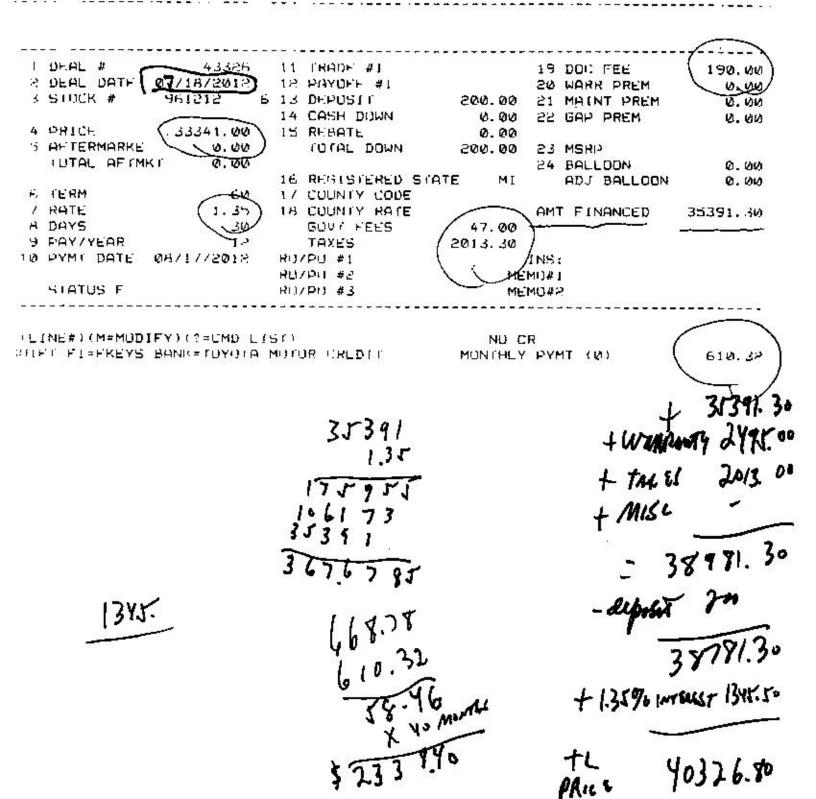


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Subject to the terms and conditions below and on the reverse side of this order, the dealer agrees to selllease and the buyer(s) agree(s) to purchase/lease the vehicle DESCRIBED BELOW. YY PURCHASE ORDER LEASE ORDER TX CAR TRUCK XX NEW USED DEMO ☐ CTHER ETOCK NO. YEAR MAKE MODEL BODY COLOR TOYOTA PRIUS 4 DOOR BLIZZA 21212 VIN NUMBER 3 0 P 3 C 3 8 MANUFACTURER'S INFORMATION OTHER INSTALLED ACCESSORIES (SEE PARAGRAPH 1 UNDER "IMPORTANT BLIYERS INFORMATION") TRADE-IN-INFORMATION (SEE PARAGRAPHS 3 & 4, ON REVERSE SIDE) YEAR MAKE MODEL BOOY COLOR UCENSE EXPERATION MILEAGE PLATE DATE WW NUMBER UEN HOLDER BALANCE GOOD UNTIL QUOTED DATE IMPORTANT BUYER INFORMATION Any warranties from a Manufacturer as supplier, including warranties so any Design-installed Non-Manufacturer ascenaries are theirs, not Dealer's, and only Desirrent/states recommunity security are units, not Dealer's, and only such Manufacturer or other upptier will be liable for performance under these warranties. All goods, services and Vehicles sold by Desire are sold "AS IS" unless Desire farmished Buyer with a separate written warranty or service contract or the said car sticker on the window on the vehicle (adicates otherwise, (SEE PARAGRAPH IS ON REVERSE SIDE.) This dischalars in no way affects the stants factorer is Vehicle Warranty.

2. If this is a credit sale or lease, this Order is pot binding on the Buyer and the Buyer can cancel it and recover the deposit until Buyer receives a document containing the required firmacial or lease disclosures. The annual percentage russ for a credit card sale may be negotiable with the Dealer. The Dealer may assign this contract and remain in right to receive a part of the finance charge.

4. The salesparson has no authority to make and dealer that not be bound by any provinces or representations unless they are written on this notice and approved by dealer; a surbonized representative. 5. Unless otherwise noted, the buyer listed as Buyer "A" will be the registered owner/lesses of the Vehicle. 6. The installment contract, lease or other document signed by the Buyer may require the Buyer to Submit claims arising from or relaced to the purchase lease or funncing of the vehicle to binding arbitration. 7. Any chairs or lawrent arising out of the purchase or lease of the vehicle against the dealer by the Buyer must be filed no more than 165 days after the date of the delivery of the vehicle (SEE PARAGRAPH IS ON THE REVERSED SIDE) BUYER'S REPRESENTATIONS ISUTER'S REFERENCIAL ALTUNS

There read the material printed on the back and materiated and agree to it as part of this Order as if it were printed above my signature. I sudermand that the freel and track this order comprises the centre agreement affecting this purchameteres and no other agreement or understanding of any uniter concentrate same has been made are exceed into, or will be recognized. I also certify that on credit has been either cutereded by Desire or arranged by Desire for the each down payment unless it appears in writing on the face of this Order. I certify that I am at lease 18 years old, and acknowledge receipt of a copy of this Order. Buyer (A) Date 87/18/12 Signed: Buyer (B) Date Signed: This Order is not bigetting entil Dealer's authorized representative signs here. Donler Date 97/16/12 Signed:

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